

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0638, State of New Hampshire v. Jenna A. Finley, the court on June 28, 2007, issued the following order:

The defendant, Jenna A. Finley, appeals a finding of guilty for unlawful possession of alcoholic beverages. She argues that the trial court erred in denying her motion to suppress because the arresting officer lacked probable cause to stop either a passenger in her car, after he exited a store with a twelve-pack of ale, or her, as she sat in her parked car. She also contends that the trial court erred in denying her motion for directed verdict because the State failed to prove that she was under 21 and that she knowingly possessed alcohol. We affirm.

When reviewing a trial court's order on a motion to suppress, we accept the trial court's findings unless they lack support in the record or are clearly erroneous. State v. Licks, 154 N.H. 491, 492 (2006). Our review of the trial court's legal conclusions is de novo. Id.

The defendant first contests the alleged seizure of a passenger in her car. She cites no case and we are aware of none in which we have held that a defendant has standing to contest the alleged seizure of another person. Cf. Petition of Burling, 139 N.H. 266, 272 (1994) (general rule is that party has standing to raise constitutional issue only when his own personal rights have been or will be directly and specifically affected). Moreover, in this case, even if we assume that the passenger had been seized, we note that the same facts cited in our analysis of the legality of the defendant's detention applied to the passenger's detention.

The defendant also argues that the arresting officer did not have reasonable suspicion to detain her. Even if we assume that the defendant was seized at the time she was asked for identification, we conclude that the arresting officer had reasonable suspicion that she was engaged in illegal conduct. The police officer saw her passenger place a twelve-pack of ale in the trunk of the defendant's car and observed that the defendant appeared to be young. He based his estimate of her age on his observation of her appearance at close range. It was the conduct coupled with her appearance observed by the police officer that gave rise to his reasonable suspicion. That the observed activity might be consistent with both guilty and innocent behavior did not require that the police officer rule out innocent conduct before proceeding. See State v. Galgay, 145 N.H. 100, 103 (2000).

The defendant also argues that the trial court erred in denying her motion for a directed verdict because the State failed to prove that she was under 21. A review of the record, however, indicates that she did not raise this issue in the trial court; we therefore decline to consider it on appeal. See State v. Blackmer, 149 N.H. 47, 48 (2003) (supreme court will not review any issue that defendant did not raise in trial court). Moreover, having reviewed the record before us, we find no plain error. See Sup. Ct. R. 16-A; State v. Emery, 152 N.H. 783, 786 (2005) (discussion of standards for application of plain error rule).

The defendant's final argument is that the trial court erred in denying her motion for a directed verdict because the State failed to establish the mens rea of knowingly. See State v. Goupil, 154 N.H. 208, 222-23 (2006) (to prevail on challenge to sufficiency of evidence, defendant must show that, viewing evidence in light most favorable to State, no rational trier of fact could have found guilt beyond reasonable doubt); RSA 626:2, II(b) (1996) (defining mental state of "knowingly"). Assuming that this requirement applied in this case in which the defendant was charged with a violation, we find no error. The trial court found that the defendant's vehicle was facing the store from which her passenger exited with the twelve-pack of ale "in plain view in his hand," the parking area was lighted and the trunk of the vehicle was open. Construed in the light most favorable to the State, these findings support a conclusion that the defendant knowingly possessed alcohol.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**